

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

UNITED STATES,

Appellee,

v.

No. 23-4705

CARLOS ALSTON,

Appellant.

**APPELLANT'S UNOPPOSED MOTION TO HOLD CASE IN ABEYANCE PENDING THE SUPREME COURT'S RESOLUTION OF *UNITED STATES v. RAHIMI*, NO. 22-915, AND TO SUSPEND THE BRIEFING ORDER PENDING RESOLUTION OF THIS MOTION**

Under Fourth Circuit Local Rule 12(d), Appellee Carlos Alston hereby respectfully moves the Court to place this appeal in abeyance pending the Supreme Court's ruling in *United States v. Rahimi*, No. 22-915. He further moves to suspend the briefing schedule pending resolution of this abeyance motion. The United States has no objection to any of the relief requested.

In support of his Motion, Mr. Alston states the following:

1. A grand jury indicted Mr. Alston for receipt of a firearm while under indictment, in violation of 18 U.S.C. §§ 922(n) and 924, and possession of a firearm by an unlawful user of a controlled substance, in violation of 18 U.S.C. §§ 922(g)(3) and 924.

2. Mr. Alston moved to dismiss both counts of the indictment pursuant to the Second Amendment of the United States Constitution and *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The district court denied the motion to dismiss the charge of receipt of a firearm while under indictment. But the district court allowed the motion to dismiss the charge of possession of a firearm by an unlawful user of a controlled substance. And the government filed this interlocutory appeal.

3. The government filed its corrected opening brief and the corrected joint appendix on March 12, 2024. Mr. Alston's response brief is currently due, after one extension, on April 25, 2024.

4. On November 7, 2023, the Supreme Court heard oral argument in *United States v. Rahimi*, No. 22-915, on whether 18 U.S.C. § 922(g)(8), which prohibits possession of a firearm by someone subject to a domestic violence restraining order, is facially unconstitutional under the Second Amendment. A decision in *Rahimi* is expected by the end of June 2024.

5. The briefing and oral argument in *Rahimi* discussed the issue of whether the government may disarm people who are not law-abiding, responsible citizens. Likewise, the government here argues in its opening brief that "Alston, as a regular unlawful drug user, is not law-abiding or responsible, and thus he does not enjoy Second Amendment protections." Gov't Br. 15.

6. The Supreme Court's decision in *Rahimi* will be binding precedent on the question of whether people who are not law-abiding, responsible citizens

nevertheless enjoy Second Amendment protections. That decision will therefore be helpful to counsel in briefing, and this Court in deciding, whether 18 U.S.C. § 922(g)(3) violates the Second Amendment as interpreted by *Bruen*. If this case is not held in abeyance for *Rahimi*, the parties would have to complete briefing without the benefit of *Rahimi* and then file a series of supplemental briefs after *Rahimi*, which would be a waste of resources.

7. In *United States v. Goodman*, No. 23-4619, this Court placed the appeal in abeyance pending a decision in *Rahimi*.

8. Mr. Alston also moves this Court to suspend the briefing order pending resolution of this motion.

9. Undersigned counsel has contacted the government's counsel of record, Assistant United States Attorneys David Bragdon and Sarah E. Nokes, regarding the filing of this motion. Ms. Nokes states that the United States does not object to any of the relief requested.

Thus, Appellee Carlos Alston respectfully prays that the Court suspend the briefing schedule in this case pending a ruling on this motion and that it hold this case in abeyance pending the Supreme Court's ruling in *United States v. Rahimi*, No. 22-915.

Respectfully submitted this 16th day of April 2024.

Respectfully submitted,

G. ALAN DUBoIS  
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*/s/ Andrew DeSimone*  
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*/s/ Andrew DeSimone*  
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